

CITY OF FLAGSTAFF

REQUEST FOR PROPOSALS

PRODUCT AND OR SERVICES: Investment Management Services

PROPOSAL NUMBER: 2011-42

PROPOSALS DUE NO LATER THAN: 3:00 p.m., March 30, 2011

PRE-PROPOSAL MEETING (Non-Mandatory): N/A

RFP OPENING LOCATION: *City of Flagstaff
Management Services-Purchasing Division
211 West Aspen Ave.
Flagstaff, AZ 86001
(928) 779-7619/Fax (928) 779-7656*

In accordance with the Charter for the City of Flagstaff in Flagstaff, Arizona ("City") and by Arizona State Statute, competitive sealed offers for the products or services specified will be received by the City at the above specified location, until the time and date cited. Offers received by the correct time and date will be opened and the name of each Proposer will be publicly read.

Offers shall be in the actual possession of the City, at the location indicated, on or prior to the exact time and date indicated above. Late offers shall not be considered.

Offers must be submitted in a sealed envelope with the REQUEST FOR PROPOSAL name and number and the Proposer's name and address and the RFP closing date and time clearly indicated on the envelope. All offers must be completed in ink or typewritten. Additional instructions for preparing a proposal response are provided herein.

PROPOSERS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE REQUEST FOR PROPOSAL.

Buyer:	<u>Ann Marie Fisher</u>
Phone Number:	<u>(928) 779-7619</u>
Fax Number:	<u>(928) 779-7656</u>
E-mail Address:	<u>afisher@flagstaffaz.gov</u>
Date:	<u>March 7, 2011</u>

Rick Compau, C.P.M., Director of Purchasing

Date

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ACKNOWLEDGMENT OF RECEIPT

RFP ISSUE DATE: March 7, 2011

PRODUCT AND/OR SERVICES: **INVESTMENT MANAGEMENT SERVICES**

PROPOSAL NO.: 2011-42

QUESTIONS MUST BE RECEIVED BY: March 25, 2011

OFFER DEADLINE: 3:00 p.m., on March 30, 2011

Please provide the requested information below as acknowledgment that you have received our Request for Proposal ("RFP") noted above. It is **recommended** that interested proposers complete and return this acknowledgment via Fax to the City of Flagstaff Purchasing Office at (928) 779-7656 or by mail. **Only those companies or individuals returning completed acknowledgments will receive notification of any addenda or responses to questions regarding this RFP.** Proposals from companies or individuals **not** acknowledging the addenda may be considered incomplete, non-responsive and potentially subject to disqualification.

Name of Company
or Individual: _____

Name / Title of Contact: _____

Address: _____

Phone #: () _____ Fax #: () _____

E-Mail Address: _____

Signature: _____ Date: _____

NO RESPONSE FORM

Product and/or services **INVESTMENT MANAGEMENT SERVICES**

Proposal Number: 2011-42

Proposers not responding to this solicitation are asked to complete this form. Please return this form to the address listed above or fax to (928) 779-7656.

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Reason for NO OFFER:

- ☐ Do not handle product/service
- ☐ Unable to respond due to current staff availability and/or business conditions
- ☐ Insufficient time
- ☐ Unable to meet terms, conditions, specifications or requirements as described within the solicitation due to:

☐ Other: _____

This *NO OFFER* response is authorized by: _____

Signature

Title

- Please check one: ☐ Retain our company on the mailing list for future solicitations.
- ☐ Please remove our company from the mailing list.
- ☐ Please remove our company from this commodity or service only.

INSTRUCTIONS TO PROPOSERS

1. **PURPOSE:** Pursuant to provisions of the City Charter, as well as provisions contained in this document, the City intends to establish a contract for:

INVESTMENT MANAGEMENT SERVICES

The City is seeking proposals from qualified Proposers for INVESTMENT MANAGEMENT SERVICES. The successful Proposer shall be an approved vendor for the equipment or services being recommended and shall provide a letter from the appropriate company or individual with a statement to that effect.

2. **PREPARATION OF PROPOSAL:**

- a. Forms: All Offers shall be on the forms provided in this RFP Package. The RFP Package shall consist of all documents listed in the Table of Contents. It is permissible to copy these forms if required. Facsimiles, telegraphic Offers or mailgrams will not be considered.
- b. Evidence of Intent to be Bound: The Offer document must be submitted with an original ink signature by the person authorized to sign the Offer.
- c. Typed or Ink; Corrections: The Offer must be typed or in ink. Erasures, interlineations or other modifications in this RFP document shall be initialed in ink by the authorized person signing the Offer. No Offer shall be altered, amended or withdrawn after the specified RFP due time and date.
- d. Unit Price Prevails: In case of error in the extension of prices in the Offer, unit price shall govern.
- e. Days: Periods of time, stated as a number of days, shall be calendar days, unless otherwise specified.
- f. Duty to Examine: It is the responsibility of all Proposers to examine the entire RFP Package and seek clarification in writing of any item or requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing an Offer confers no right of withdrawal after due time and date.
- g. Proposers List: Proposers who fail to respond to solicitations for two consecutive procurements of similar items may be removed from the applicable Proposers list.
- h. Submittal: All Offers must be clearly marked: **INVESTMENT MANAGEMENT SERVICES, RFP #2011-42**, your name or company name and the closing date and time of this RFP on the outside of the sealed envelope. **There is a supplemental agreement, in addition to this RFP, that the successful Proposer will be expected to sign without alteration (See Attachment A).** Proposals shall be provided in three ring binders with **ONE (1) ORIGINAL AND FIVE (5) COPIES** of the proposal included.

3. **QUALITY OF PROPOSAL:** The quality of the proposal(s) submitted by the Proposer is viewed as a basic indication of the Proposer's general capability and technical competence. Quality is interpreted as (1) completeness, (2) thoroughness, (3) accuracy, (4) compliance with proposal instructions, and (5) the organization and conciseness of descriptive text material. Proposals that do not comply with instructions may be eliminated from further consideration.

4. **GENERAL CONTENT:** The proposal submitted should be specific and complete in every detail. It should be practical and should be prepared simply and economically, providing a straight-forward, concise delineation of capabilities to satisfactorily perform the proposal being sought. Proposers should not necessarily limit the proposal to the performance of the services in accordance with this document but should outline any additional services and their costs if deemed necessary to accomplish the scope of services.

- 5. INQUIRIES:** Any question(s) related to this RFP shall be directed to the Buyer whose name appears at the bottom of the front page of this document. Questions should be submitted in writing when time permits. Proposers shall not contact or ask questions of the department for which the requirement is being procured. The City **shall not** be responsible for Proposers adjusting their proposal based on any oral instructions made by any employees or officers of the City. All changes to the RFP shall be in the form of a written addendum, which shall be furnished to all Proposers who are listed with the City as having received the original RFP.

The City shall not respond to any requests for information pertaining to specifications received less than five working days (Monday–Friday, excluding holidays) before the proposal opening. Any interpretation or correction of the RFP documents shall be made only by written addendum and a copy of each addendum shall be mailed, faxed or delivered to all who are known to have received a RFP Package. The City shall not be responsible for any other explanations or interpretations of the RFP Package.

The Buyer may be required to submit any and all questions in writing at the City's sole discretion. Any correspondence related to a solicitation shall refer to the appropriate solicitation number, page and paragraph number. However, the Proposer shall not place the solicitation number on the outside of an envelope containing questions, since such an envelope may be identified as a sealed RFP and may not be opened until after the official RFP due date and time.

- 6. LATE PROPOSAL:** Late proposal responses shall not be considered. A Proposer submitting a late proposal shall be so notified.
- 7. WITHDRAWAL OF PROPOSAL:** At any time prior to a specified solicitation due time and date a Proposer (or designated representative) may withdraw the Proposal. Facsimile, telegraphic or mailgram withdrawals shall not be considered.
- 8. AMENDMENT OF PROPOSAL:** The Proposer shall acknowledge receipt of a Solicitation Amendment by signing and returning the document prior to the specified due time and date. Failure to return a signed copy of a material solicitation amendment or to follow the instructions for acknowledgment of the solicitation amendment shall result in rejection of the proposal.
- 9. PAYMENT:** A separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material, service or construction and a correct invoice. The City's agreement for payment terms is **NET 30**, unless the Proposer offers discounted terms.
- 10. DISCOUNTS:** Payment discount periods shall be computed from the date of receipt of material/service or correct invoice, whichever is later, to the date the City's warrant is mailed. Unless freight and other charges are itemized, any discount provided shall be taken on full amount of invoice. Payment discounts of ten (10) calendar days or more shall be deducted from the proposal price in determining the low proposal. However, the City shall be entitled to take advantage of any payment discount offered by the Proposer provided payment is made within the discount period.
- 11. TAXES:** The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, as required, shall be indicated as a separate item.

12. EVALUATION AND AWARD OF CONTRACT:

- a. Unless the Proposer states otherwise, or unless otherwise provided within the RFP, the City reserves the right to make multiple awards or to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. In accordance with the City Charter the contract shall be awarded to the lowest responsive, responsible Proposer whose proposal is the most satisfactory and advantageous to the City based on the factors set forth in the RFP Package. The City shall be the sole judge as to the acceptability of the products or services offered.
- b. Notwithstanding any other provision of the RFP Package, the City expressly reserves the right to:
 - (1) Waive any immaterial defect or informality; or
 - (2) Reject any or all Offers, or portions thereof; or
 - (3) Cancel/Reissue an RFP.
- c. All responses to this RFP are offers to contract with the City and shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the RFP Package, including the Supplemental Agreement. Offers do not become contracts unless and until they are formally accepted by the City. If the value of the services or goods in the Proposal is \$50,000 or less, a contract will be formed when the City Manager accepts, in writing, the Proposer's Offer. Regardless of whether the Offer is accepted by the City Manager or not, a Supplemental Agreement will be executed. Once the Supplemental Agreement is fully executed, it will be the final and binding contract between the Proposer and the City. The Supplemental Agreement may incorporate some or all of the RFP Package.
- d. The City reserves the right to clarify any contractual terms with the concurrence of Proposer, however, any substantial non-conformity in the Offer shall be deemed non-responsive and the Offer rejected. No alteration of any contract resulting from an Offer may be made without the express written approval of the Director of Purchasing in the form of an official contract amendment. Any attempt to alter any such contract without such approval is a violation of the contract. Any such action is subject to legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Proposer.

13. ENVIRONMENTAL PROCUREMENT POLICY: The City has established an Environmental Procurement Policy which encourages the purchase of the most environmentally responsible products and services available to meet the intended purpose. We encourage the offer of alternatives that increase the environmental responsibility of the products or services called for in this solicitation.

14. SALES TAX: The City will not pay any taxes on invoices received unless an Arizona Transaction Privilege License Number or Arizona Use Tax Number and, if applicable, a City Sales Tax Number are listed below. The City will figure applicable taxes to offers received from out of state Proposers who do not list an Arizona Use Tax number for tabulation and total cost evaluation.

Arizona Sales Tax Number: _____

Arizona Use Tax Number: _____

City of: _____

Sales Tax Number: _____

Refer to the following to determine if the freight or delivery charges are taxable:

Delivery charges are considered non-taxable and exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer's books and records show the separate delivery charges. **Delivery charges if separately stated are considered to be non taxable.**

Freight charges for delivery from place of production or the manufacturer to the Proposer either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight-in" and are not considered delivery. **Freight-in charges are taxable.**

15. NON-COLLUSION: The Proposer must sign a non-collusion affidavit.

STANDARD TERMS AND CONDITIONS

The following terms and conditions are an explicit part of the solicitation and any offer received by a Proposer in response to this RFP.

1. **CERTIFICATION:** By signature on the Offer page, Proposer certifies that:
 - a. The submission of the Offer did not involve collusion or other anti-competitive practices.
 - b. Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in the rejection of the Offer. Signing the Offer with a false statement shall void the Offer and any resulting contract and may be subject to penalties provided by law.
2. **GRATUITIES:** The City may, by written notice to the Proposer, cancel any resulting contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Proposer or any agent or representative of the Proposer, to any officer or employee of the City with a view toward securing a contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such contract. In the event any resulting contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Proposer the amount of the gratuity.
3. **OFFER BY PROPOSER:** All responses to this RFP are offers to contract with the City and shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the RFP Package, including the Supplemental Agreement. Offers do not become contracts unless and until they are formally accepted by the City. Formal acceptance may occur when the City Manager accepts an Offer, or when the City Council accepts the Offer or enters into the Supplemental Agreement, as allowed under the Flagstaff City Charter. The City reserves the right to clarify any contractual terms with the concurrence of Proposer, however, any substantial non-conformity in the Offer shall be deemed non-responsive and the Offer rejected. No alteration on any contract resulting from an Offer may be made without the express written approval of the Director of Purchasing in the form of an official contract amendment. Any attempt to alter any such contract without such approval is a violation of the contract. Any such action is subject to legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Proposer.
4. **EXCEPTION TO THE SOLICITATION:** Proposer shall identify and list all exceptions taken to all sections of this RFP Package and list these exceptions referencing the section (paragraph) where the exception exists and then identify the exceptions and the proposed wording for Proposer's exception. Proposer shall list these exceptions under the heading "Exception to the PROPOSAL Solicitation." Exceptions that surface elsewhere and that do not also appear under the heading "Exception to the Proposal Solicitation", shall be considered invalid and void and of no contractual significance.

The City reserves the right to reject, render the proposal non-responsive, enter into negotiation on any of the Proposer exceptions, or accept them outright.
5. **TAXES and SOCIAL SECURITY:** Proposer is advised that taxes or social security payments shall not be withheld from a City payment issued thereunder and that Proposer should make arrangements to directly pay such expenses, if any.

- 6. INTERPRETATION - PAROL EVIDENCE:** The Supplemental Agreement is intended by the parties as a final expression of their agreement. No course of prior dealings between the parties and no usage to the trade shall be relevant to supplement or explain any term used in the Supplemental Agreement. Acceptance or acquiescence in a course of performance rendered under the Supplemental Agreement shall not be relevant to determine the meaning of the contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object. Whenever a term defined by the City Charter or applicable Arizona State Statute is used in the Supplemental Agreement, that definition shall control.
- 7. RIGHTS AND REMEDIES:** No provision in this document or in the RFP Packet shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract.
- 8. PROTESTS:** Protests shall be resolved, in accordance with the following: A protest shall be in writing and shall be personally delivered or served upon the City Purchasing Director. A protest of a solicitation shall be received at the City Purchasing Department before the solicitation opening date. A protest of a proposed award or of an award shall be personally delivered or served upon the City Purchasing Director within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

 - a. The name, address and telephone number of the protester;
 - b. The signature of the protester or its representative;
 - c. Identification of the solicitation or contract number;
 - d. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - e. The form of relief requested.
- 9. ADVERTISING:** Proposer shall not advertise or publish information concerning the solicitation or the Supplemental Agreement, without the prior written consent of the City.
- 10. RIGHT TO INSPECT PLANT:** The City may, at reasonable times and at its expense, inspect the plant or place of business of a Proposer or Subproposer which is related to the performance of any contract as awarded or to be awarded.
- 11. INSPECTION:** All materials, services or construction are subject to final inspection and acceptance by the City. Materials, services or construction failing to conform to the specifications of the contract shall be held at Proposer's risk and may be returned to Proposer. If so returned, all costs shall be the responsibility of Proposer.
- 12. PURCHASE ORDERS:** The City shall issue a purchase order for the goods or services covered by the contract. All such purchase orders will reference the contract number, as well as the City Council approval date and Council Agenda item number.
- 13. PACKING AND SHIPPING:** If applicable, Proposer shall be responsible for industry standard packing which conforms to requirements of carrier's tariff and ICC regulations. Containers shall be clearly marked as to lot number, destination, address and purchase order number. All shipments shall be F.O.B. Destination, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001, unless otherwise specified by the City. C.O.D. shipments will not be accepted.
- 14. TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within the contract.

- 15. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials, or services, must fully comply with all provisions of the contract. If a tender is made which does not fully conform, this shall constitute a breach and Proposer shall not have the right to substitute a conforming tender without prior approval from the City.
- 16. DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Proposer shall deliver conforming materials, or services, in each installment or lot of the contract and may not substitute nonconforming materials, or services. Delivery of nonconforming materials, and/or services, or a default of any nature, at the option of the City, shall constitute a breach of the contract as a whole.
- 17. SHIPMENT UNDER RESERVATION PROHIBITED:** Proposer is not authorized to ship materials under reservation and no tender of a bill of lading shall operate as a tender of the materials.
- 18. LIENS:** All goods, services and other deliverables supplied to the City under the Supplemental Agreement shall be free of all liens other than the security interest held by Proposer until payment in full is made by the City. Upon request of the City, Proposer shall provide a formal release of all liens.
- 19. LICENSES:** Proposer shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by Proposer as applicable to the Supplemental Agreement.
- 20. COST OF PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration by the City should be prepared simply and economically, providing adequate information in a straightforward and concise manner.
- 21. CONFIDENTIAL INFORMATION:**
- A. If a Proposer believes a specific section of its proposal to be confidential, the Proposer is to mark the page(s) confidential and isolate the pages marked confidential in a specific and clearly labeled section of its proposal response. The Proposer is to include a written statement as to the basis for considering the marked pages confidential.
 - B. The information identified by the person as confidential shall not be disclosed until the City makes a written determination.
 - C. The City shall review the statement and information and shall determine in writing whether the information shall be treated as confidential.
 - D. If the City determines to disclose the information, the City shall inform the Proposer in writing of such determination.
 - E. After award of a contract, proposal responses shall be considered public record and subject to review. Materials submitted by Proposers shall become the property of the City unless otherwise requested at the time of submission. Materials identified as confidential by the Proposer will be reviewed by the City Purchasing Office who shall make a determination as to whether the information is disclosable. Generally, information submitted in response to this RFP is considered public record and may be disclosed pursuant to the Arizona Public Records law.

- 22. AUTHORIZED CHANGES:** The City reserves the right at any time to make changes in any one or more of the following: a) methods of shipment or packing; b) place of delivery; and c) quantities. If any change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both.

Any claim for adjustment shall be evidenced in writing and approved by the City Purchasing Director prior to the institution of the change.

- 23. SAMPLES:** Upon request, Proposers may be required to furnish a sample of the goods and/or service to be provided. Submission of a sample by a Proposer shall constitute an express warranty that the whole of the goods and/or service shall conform to the sample submitted. All samples submitted by a Proposer shall become the property of the City for testing purposes and/or future comparison at no charge unless designated otherwise by the Proposer. Samples not destroyed by testing or which are not retained for future comparison shall be returned upon request at Proposer's expense.

- 24. PRE-PROPOSAL CONFERENCE:** A prospective Proposers conference may be held at the City's sole discretion. If scheduled, the date and time of this conference shall be indicated on the cover page of this document.

The purpose of this conference shall be to clarify the contents of this RFP Package in order to prevent any misunderstanding of the City's position. Any doubt as to the requirements of this RFP Package or any apparent omission or discrepancy should be presented to the City at this conference. The City shall then determine the appropriate action necessary, if any, and issue a written amendment to the RFP. Oral statements or instructions shall not constitute an amendment to this RFP.

- 25. DISCUSSIONS AND REVISIONS TO PROPOSAL:** Discussions may be conducted with responsible Proposers who submit proposals determined to be reasonably susceptible of being selected for award. Such discussions may facilitate the exchange of pertinent information to enable a more complete understanding of, and responsiveness to, the solicitation requirements. Should the City elect to call for 'best and final' offers, Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing Proposers. The purposes of such discussions shall be to:

- A. Determine in greater detail such Proposers' qualifications, and
- B. Explore with the Proposers, the Scope of Services, the Proposers' proposed method of performance, and the relative utility of alternate methods of approach;
- C. Determining that the Proposers shall make available the necessary personnel and facilities to perform within the required time;
- D. Agreeing upon compensation which is fair and reasonable, taking into account the estimated value of the required services, and the scope, complexity and nature of such services.

- 26. COOPERATIVE PURCHASING AGREEMENTS:** A contract resulting from this RFP may be extended for use by the members of the Flagstaff Alliance for the Second Century. An Intergovernmental Agreement (IGA) has been executed between the City, Coconino County Community College District, Northern Arizona University, Coconino County and Flagstaff Unified

School District. The contract may also be extended to other municipalities and government agencies of the state. Any such usage by other municipalities and government agencies must be in accordance with the ordinance, charter and/or rules and regulations of the respective political entity. Any public agencies not identified within this RFP who wish to cooperatively use the contract are subject to the approval of Proposer.

The City is also a member of S.A.V.E. (Strategic Alliance for Volume Expenditures), which consists of numerous municipalities, counties, universities, colleges, schools and other Arizona State agencies. These cooperatives are achieved through Intergovernmental Agreements (IGA) in accordance with provisions allowed by A.R.S. §11-952 and §41-2632. The IGAs permit purchases of material, equipment and services from Proposers at the prices, terms and conditions contained in contracts originated between any and all of these agencies and the Proposer(s) contract, as awarded.

Is your firm willing to offer the goods and services solicited under the terms and conditions of this solicitation to other members of the Flagstaff Alliance for the Second Century and S.A.V.E. under the same pricing, terms and conditions?

_____ Yes _____ No

27. FINANCIAL STATUS: All Proposers shall make available upon request a current audited financial statement, a current audited financial report, or a copy of a current federal income tax return. Failure or refusal to provide this information within five (5) business days after communication of the request by the City shall be sufficient grounds for the City to reject a proposal, and/or to declare a Proposer non-responsive or non-responsible.

If a Proposer is currently involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, the Proposer must provide the City with that information as part of its proposal. The City may consider that information during evaluation of the proposal.

By submitting a proposal in response to this solicitation, Proposer agrees that, if, during the term of any contract it has with the City, it becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of Proposer under federal bankruptcy law or any state insolvency law, Proposer shall immediately provide the City with a written notice to that effect, and shall provide the City with any relevant information it requests to determine whether the Proposer will meet its obligations to the City.

28. GOVERNING LAW and JURISDICTION: This solicitation shall be governed by and construed in accordance with the laws of the State of Arizona.

29. SUBSEQUENT PURCHASES: The City, with the consent of the successful Proposer(s), reserves the right to purchase additional items as listed in this proposal, if Proposer is willing to offer the same terms and conditions as submitted in this proposal, for a period of twelve (12) months from the date of City Council approval.

30. POINT OF CONTACT: The proposal must indicate the name of one individual who the City is to contact with any questions or clarifications in regards to the proposal.

31. ON-SITE INVESTIGATION: Proposers are strongly encouraged to view all of the City's facilities that may be referenced in the Scope of Work prior to submitting their proposal. The Proposer

shall be responsible for examining the facility sites and comparing it with the descriptions and specifications, to have carefully examined all of the RFP Package, including the sample contract and to have satisfied themselves as to the conditions under which the work is to be performed before submitting a proposal and entering into the contract.

No allowance shall subsequently be made on behalf of Proposer on account of an error on its part or its negligence or failure to become acquainted with the conditions of the site, or surrounding areas.

32. CONTRACT ADMINISTRATION: To help insure contract compliance, a Contract Administration Process will be an integral part of the contract. This Contract Administration Process is an audit and feedback system and will be in addition to any of the other policies and procedures contained herein. The Contract Administration Process is a total quality management tool that empowers the hands-on users to monitor and assure contract compliance. The Proposer should know during the proposal process that the successful Proposer will be closely monitored for contract compliance. No additional cost is anticipated to be incurred by the successful Proposer by the presence of the Contract Administration Process as long as contract compliance is maintained.

All changes or amendments to the contract are to be authorized by the Purchasing Director and approved by the City Council.

34. CONTRACT TYPE: Firm Fixed Fee. Initial term is for two (2) years from the date of execution of the Supplemental Agreement with annual extensions not to exceed a total of thirty-six (36) months.

35. CONTRACT RENEWAL: The City reserves the right to unilaterally extend the period of the contract for ninety (90) days beyond the stated expiration date. In addition, by mutual written consent, the contract may be renewed for supplemental periods of up to **three (3)** additional one (1) year terms.

36. PRICING ADJUSTMENTS: The City Purchasing Office shall review fully documented requests for price increases after the Supplemental Agreement has been in effect for **FIRST TERM OF AGREEMENT** year(s). The requested price increase shall be based upon an increase in service level at the time of the Offer and can be shown to directly affect the price of the item concerned. The City Purchasing Office shall determine whether the requested price increase, or an alternative option, is in the best interest of the City. Thirty (30) day's prior written notification by Proposer shall be required for any price change requests. All price adjustments shall be effective upon City Council award.

37. OFFER ACCEPTANCE PERIOD: In order to allow for an adequate evaluation, the City requires an offer in response to this solicitation to be valid and irrevocable for Ninety (90) days after the opening time and date.

38. CONTACT WITH CITY EMPLOYEES AND CONTRACTORS

All persons and/or firms that are interested in this project (including the firm's employees, representatives, agents, lobbyists, attorneys, and sub-contractors) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the evaluation/selection or creating bias in the evaluation/selection process with any person who may play a part in the evaluation/selection process. This includes but is not limited to the evaluation panel, City Council Members, City Manager, Assistant City Manager(s), Deputy City Manager(s), Department Directors or other staff. This policy is intended to create a level playing field for all potential firms, assure that contract decisions are made in public, and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified on Page One of this document.

SPECIAL TERMS AND CONDITIONS

1. KEY PERSONNEL:

It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.

- A. The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City and approval by the City.
- B. If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace each person with personnel of substantially equal ability and qualifications.

- 2. INTERVIEWS:** The City reserves the right to conduct interviews with all or some of the offerors at any point during the evaluation process. However, the City may determine that interviews are not necessary. In the event interviews are conducted, information provided during the interview process shall be taken into consideration when evaluating the stated criteria.

INTRODUCTION

The City of Flagstaff ("City") is currently seeking proposals from qualified individuals and/or firms interested in providing investment management services for its investment portfolio.

The City seeks an investment advisor for the purposes of providing investment management services to include technical and strategic advice to the City. The City expects the successful Offeror to be able to provide comprehensive investment management and accounting services. Further, the City requires that those services be delivered consistently and be of the highest quality. The size of the City's investment portfolio is approximately Sixty million dollars (\$60,000,000.00). A copy of the City of Flagstaff Investment Policy is attached to this Request for Proposals as **ATTACHMENT B**.

The firm ultimately selected as the investment advisor and its affiliates will be prohibited from selling to the City, or buying from the City, any securities to or from that firm's own inventory or account(s). The successful investment advisor shall act solely in a fiduciary capacity and shall not receive any fee or direct or indirect compensation based upon the purchase or sale of securities but, rather, the investment advisor will be compensated for services pursuant to the payment provisions of its contract with the City.

SCOPE OF WORK

1. Analyze the City's current portfolio and prepare recommendations for optimization. Consider applicable City and State of Arizona policies, as well as bond resolutions, for the portfolio with regard to fund and asset class objectives, risk tolerance and authorized investment restrictions and asset allocation guidelines.
2. Prepare analyses and make recommendations on investment of the City's funds to include asset allocation, performance measurement and alternative investments.
3. Perform quarterly reporting/evaluations of asset allocations, giving consideration to market conditions, asset class performance, benchmarks, actual and policy asset allocation, financial flows in and out of the funds and performance attributions.
4. Assist in developing and implementing investment strategies that will enhance portfolio performance under current and anticipated changes in market conditions within the parameters of established investment guidelines, bond resolutions and cash flow needs.
5. Make presentations to City staff to support recommendations relating to investment strategy. Assist in the implementation of approved investment strategies.
6. Upon request, attend Audit Committee, Budget, Leadership or City Council meetings and present quarterly performance reports which shall include current information regarding the creditworthiness of investments in the portfolio, total return comparisons of the portfolio to an established index for the quarter and since inception; and market commentary and future outlook as it pertains to the City's portfolio.

7. Review and evaluate money market and other cash investment accounts for policy compliance, quality and diversification, management experience and risk controls, and competitive yield in relation to expense ratios and service capabilities.
8. Perform investment research and analysis.
9. Provide recommendations in the annual review of the investment policy/guideline, procedures and processes for investment of the City's funds.
10. Provide detailed monthly reports, in a format acceptable to the City.
11. Assist in conducting informational meetings and presentations for the City, City Council, or other involved parties.
12. Provide on-going support to the City as required, in areas related to investing activities.
13. Assist the City in planning investments to meet liquidity needs.
14. Review and recommend changes to the City's Investment Policy.

REQUIREMENTS

This section defines the broad qualifications required of the investment advisor. Areas to consider include experience providing investment management services to public sector entities, independence from other financial institutions, assets under management, and SEC and state registration. Requirements include:

1. The investment advisor shall be a registered Investment Advisor as defined and regulated by the Securities and Exchange Commission (SEC) and shall be registered in the state of Arizona.
2. The investment advisor shall be either independent of any financial institution or securities brokerage firm or shall fully disclose any relationships with such financial institution and/or securities brokerage firm relevant to the firm's relationship with the entity.
3. The investment advisor shall have a minimum of 10 (ten) years of experience in managing state/local government operating and bond funds.
4. The investment advisor shall have a minimum of \$500 million in public sector assets under ongoing and continuous active management.
5. The investment advisor shall have a minimum of \$10 million coverage in errors and omissions insurance or investment advisor professional liability insurance along with a minimum of \$10 million in additional coverage through a fidelity bond and umbrella insurance.

PROPOSAL FORMAT

CONTENT: To aid in the evaluation, it is desired that all proposals follow the same general format. The proposals are to be submitted in binders and have sections tabbed with your proposal information as outlined in the categories/criteria below.

The Evaluation Committee will evaluate responses to this RFP based on the information provided in each of the proposer's proposal response and interviews as necessary. To allow for a standard basis of evaluation, all proposal responses shall follow the format outlined below. An original and five (5) copies are to be submitted. Proposal responses should be organized with sections/dividers as follows:

Cover:

The cover should contain the following relevant data as a minimum:

- Statement indicating response to: Investment Management Services
- RFP No. 2011-42
- Submittal date
- Company name (and logo if desired)
- Other information/graphics as desired

Title Page:

Include Firm's name, address, e-mail/website address(es), phone and FAX numbers and name(s) of principals.

A. Organization

1. Describe your organization, date founded, ownership and other business affiliations.
 - Identify your specific experience in serving as investment advisor for state government, local government and other governmental entities.
 - Identify specific experience by type and name of entity in Arizona.
 - Identify the types of accounts primarily sought by your firm.
 - Identify the types of accounts managed by your firm (e.g., government, pension, corporate, high net worth, endowment/foundation.).
2. Within the past three years, have there been any significant developments in your organization (e.g., changes in ownership, new business ventures)? Do you expect any changes in the near future?
3. Describe any U.S. Securities and Exchange Commission (SEC) censures or litigation involving your organization, any officer, or employee at any time.
4. Describe the firm's fiduciary liability and/or errors and omissions insurance coverage. Include dollar amount of coverage.
5. Provide audited financial statements for the past 3 years.
6. State the dollar value of the assets and the number of portfolios the firm has under direct and continuous management, categorized between commingled funds, individually managed public sector accounts, and other institutional accounts.

7. How many accounts has the firm added in the past year? How many total accounts have been discontinued by clients in the past year? How many municipal or other governmental accounts has the firm added in the past year? How many municipal or other governmental accounts have been discontinued by clients in the past year?
8. Provide data on account/asset growth and other performance statistics over the past three years for your governmental clients. Indicate the number of clientele accounts gained and the number of accounts lost.

B. Personnel

1. Identify the key staff (exclusive of support or administrative staff) in the firm who will have primary responsibility for work under this contract. Which professional staff member will be the primary client contact for the City?
 - Describe their current responsibilities with the firm.
 - Describe the role each will play if a contract is awarded to the firm.
2. Provide a resume of each individual who would be working on the contract, if awarded, including:
 - Their length of service with the firm.
 - Their education and specific experience in the field and relevant clients that they have served as an investment advisor in the last five years.
 - Other information that demonstrates specifically that the key personnel assigned to this contract have the skills and experience to successfully perform the duties required under the scope of work (e.g. professional certifications, etc.).
3. Identify the size of the firm's staff commitment to the public sector and the credentials of key personnel.
4. Have any of the above staff ever been investigated for alleged improper, fraudulent or unfair activities related to the sale of securities? If so, please provide details.
5. Provide an organization chart for the firm. Identify the number of professionals employed by your firm by classification.
6. Provide any additional information that substantiates that the firm has other capacity or staff to perform the scope of duties, above and beyond identified key personnel.
7. Describe your firm's compensation policies for investment professionals.
8. Does your firm have a written code of conduct or ethics? How is it monitored and enforced?
9. What efforts does your firm make to keep its investment professionals informed of developments relevant to government investment managers?

C. Assets Under Management

1. Summarize your institutional investment management asset totals by category for your latest reporting period. Please specify type of entity; i.e., Governmental or Other Institutional and break down the dollar amounts between Operating, Bond and Other Type Accounts.
2. Describe the procedures that your firm has in place to address the potential or actual credit downgrade of an issuer and to disclose and advise a client of the situation.
3. Provide data on account/asset growth and other performance statistics over the past five years for a portfolio managed by your firm which is similar in size and structure to the City's investment portfolio. Identify major investment criteria, annual returns, and benchmarks.
4. List the ten largest governmental (or most representative) clients under the management team to be assigned to the City's account and the length of time they have been clients.
5. Provide a copy of the firm's Form ADV, Parts I and II (including all schedules).

D. Investment and Management Approach

1. Outline the steps that would be taken to ensure the City's objectives of safety of principal, liquidity and yield.
2. Describe your firm's investment philosophy for public clients, including your firm's philosophy regarding average duration, maturity, investment types, credit quality and yield.
3. Describe in detail your investment process, as you would apply it to the City.
4. Describe the firm's daily procedures for portfolio review, investment management and client contact.
5. Describe the primary strategies for adding value to portfolios.
6. Describe the process you would recommend for establishing the investment objectives and constraints for this account.
7. Describe the types of investment research utilized and the methods for making investment decisions, including maturity and selection.
8. How frequently would you suggest staff from your firm meet with City staff?
9. How would your firm handle fluctuating cash flows and the cash forecasting process?
10. Describe the trade process that you anticipate.

E. Reporting Capabilities

1. Submit samples of reports that would be provided and describe their frequency. Include the methods and formulas used to calculate yield and performance. Reports must be prepared in accordance with generally accepted accounting principles (GAAP) and in compliance with Governmental Accounting Standards Board (GASB) pronouncements, including GASB Statements 31 and 40.
2. Describe the frequency and format of performance reports that would be provided.
3. How will you notify the City of investment transactions?
4. Are confirmation of investment transactions sent directly by the broker/dealer to the client?
5. Are the reports and other important documents available for review online?
6. Describe how you would provide monthly accounting entries for the City's financial system from the management of the portfolio.

F. Fees

1. What, if any are the start up charges?
2. Describe the proposed compensation for services either as a flat annual fee or as a per trade fee with an annual cap.
3. Please indicate your applicable monthly fee schedule (Is your fee in basis points of the portfolio you Service, or in dollars).
 - Separately indicate the fee in basis points and in dollars (whichever way you will bill) for the following account sizes: \$5 million, \$10 million, and \$25 million.
4. Indicate any additional transaction fees. (e.g. zero coupons, CDs, Treasury bills, notes, bonds).
5. Indicate any additional fees associated with a review and set of recommendations to update the City's investment policy.
6. Indicate if there will be any miscellaneous fees and charges for the following:

Audit confirmation reporting _____
Wire transfers _____
ACH transfers _____
Meeting charges/travel _____
Other: _____

PLEASE NOTE: Please include all additional fees in this section. No additional fees will be added or allowed in the future, unless they are noted in your proposal submission.

7. In order to more efficiently manage cash flow and invest funds, the City of Flagstaff desires the capability of on-line/electronic monitoring of its accounts. On-line monitoring should be accessible via personal computer. What is your capability of providing electronic monitoring services? List your costs for providing these services.

G. References

List five (5) clients that are most similar to the City of Flagstaff for Investment Management Services. For each client listed, include the following:

- Name of government or public entity.
- Dollar amount of funds presently under management.
- Number of years that client has been with your firm.
- Investment approach, e.g., following of prescribed index and the index(es) followed.
- Contact person, name, position title, phone number, and email address (if available).

H. OTHER CONSIDERATIONS

1. Provide a copy of the firm's Form ADV, Part II, as on file with the SEC.

PROPOSER'S REFERENCES

- 1. REFERENCES.** Proposers shall submit references from relevant municipal officials for projects that are comparable in size, complexity, and scope of work sought by this RFP.
- The references should also demonstrate the Proposer's experience with the Investment Management Services proposed. The histories of such projects that they have completed, firm resumes and resumes of key personnel should also be included as well as other such information believed to demonstrates the indicated types of experience.
 - All references should include the name, title, telephone number of both the current owner of the project and the owner of the project at time of work effort. Specific reasons for using the reference must also be provided.

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	

CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001

REQUEST FOR PROPOSAL #2011-42
BUYER: Ann Marie Fisher, CPPB
PH: (928) 779-7619 , FX: (928) 779-7656

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	

Firm/Government Agency Name:	
Contact Person:	Phone:
Title:	Fax:
Address:	E-Mail Address:
	Reason for Selecting as Reference:
Project Size, Complexity, Scope and Duration:	

EXCEPTIONS, CONFIDENTIAL AND ADDITIONAL MATERIALS

Proposers shall indicate any and all exceptions taken to the provisions or specifications in this solicitation document.

Exceptions (mark one):

- ☐ No exceptions
- ☐ Exceptions taken (describe--attach additional pages if needed)

Confidential/Proprietary Submittals (mark one):

- ☐ No confidential/proprietary materials have been included with this offer
- ☐ Confidential/Proprietary materials included. Proposers should identify below any portion of their offer deemed confidential or proprietary (see Standard Terms and Conditions, section **titled Confidential Information**). Identification of such materials in this section does not guarantee that disclosure will be prevented but that the item will be subject to review by the Proposer and the City prior to any public disclosure. Requests to deem the entire offer as confidential will not be considered.

Additional Materials submitted (mark one):

- ☐ No additional materials have been included with this offer
- ☐ Additional Materials attached (describe--attach additional pages if needed)

EVALUATION CRITERIA

Proposals will be evaluated based on the Proposer's ability to meet the performance requirements and scope of work/specifications of this RFP Package. This section provides a description of the evaluation criteria that will be used to evaluate the Proposals. To be deemed responsive, it is important for the Proposer to provide appropriate detail to demonstrate satisfaction of each criterion and compliance with the performance provisions outlined in this RFP Package.

The following evaluation criteria will be used by the City of Flagstaff's evaluation committee for the selection of a Proposer to provide **INVESTMENT MANAGEMENT SERVICES**. The evaluation committee will review the initial proposal responses and score them according to the criteria listed below. Depending on the total number of proposal responses to this RFP, the committee may "short list" the proposers receiving the highest scores and conduct formal discussions/presentations to make a final evaluation. After final evaluation of proposal responses, the City may narrow the total number of responses down to approximately three (3) and may request "Best and Final" offers.

The following evaluation criteria and points schedule will be used to determine the award of the contract(s):

Evaluation Criteria	Maximum Points Available
ORGANIZATION	15
PERSONNEL	15
ASSETS UNDER MANAGEMENT	10
INVESTMENT AND MANAGEMENT APPROACH	15
REPORTING CAPABILITIES	15
FEES	20
REFERENCES	10
Total Maximum Achievable Points	100

VENDOR QUESTIONNAIRE

Company Legal/Corporate Name: _____

Doing Business As (if different than above): _____

Address: _____

City: _____ State: _____ Zip: _____ - _____

Phone: _____ Fax: _____

E-Mail Address: _____ Website: _____

Taxpayer Identification Number: _____

Remit to Address (if different than above):

Address: _____

City: _____ State: _____ Zip: _____ - _____

Contact for Questions about this proposal:

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

Day-to-Day Project Manager (if awarded):

Name: _____ Fax: _____

Phone: _____ E-Mail Address: _____

Sales/Use Tax Information (check one):

☐ Proposer is located outside Arizona (The City will pay use tax directly to the AZ Dept of Revenue)

☐ Proposer is located in Arizona (The Offeror should invoice the applicable sales tax and remit to the appropriate taxing authorities)

State Sales Tax Number: _____

City Sales Tax Number: _____ City of: _____, AZ

☐ Certified Small Business Certifying Agency: _____

☐ Certified Minority, Woman or
Disadvantaged Business Enterprise Certifying Agency: _____

Credit References: Provide the name and telephone number of at least three organizations that your company deals with on an on-going basis.

A. Company Name _____

Contact & Phone Number _____

B. Company Name _____

Contact & Phone Number _____

C. Company Name _____

Contact & Phone Number _____

Insurance - Name of insurance agent that will provide the specified coverage's.

List any other information that may be helpful in determining your qualifications including sub-contracts to be utilized if any.

Additional Information required:

- a. Year firm was established (include former firm names and year each applied).
- b. Identify the country and state in which the firm was incorporated or otherwise organized.
- c. Type of ownership and parent company and subsidiaries, if any. Include dates of any corporate mergers and/or acquisitions including all present and former subsidiaries with dates of any and all re-structuring since the founding date.
- d. A narrative description and organization chart depicting the management of the Proposer's organization and its relationship to any larger business entity.
- e. A description of the overall operations of the Proposer, the number and scope of other projects currently ongoing or set to begin in the near future.
- f. A narrative description of Proposer's familiarity with and prior operating experience in Arizona or the Southwestern United States.
- g. Provide, at Proposer's option, any additional information not specifically listed above which demonstrates the qualifications of the Proposer to perform the scope of work specified in this RFP.

APPENDIX A

DETERMINATION OF RESPONSIBILITY

DETERMINATION OF RESPONSIBILITY OF PROPOSERS, FLAGSTAFF CITY CODE SECTION NUMBER 1-20-001-0004

- A. For purposes of administering the provisions of Sections 2, 9, and 10 of Article VIII of the Flagstaff City Charter with respect to an Enumerated Contract, as hereinafter defined, and such other contracts as the City shall deem appropriate in accordance with the provisions of this Section 0004, no Proposer shall be determined to be "responsible" if that Person is a Habitual Violator, as defined herein.
- B. For purposes of this Section 0004, the masculine shall include the feminine and/or neuter and the singular the plural, and vice-versa, as sense shall require, and the following capitalized terms shall have the meaning set forth in this Subsection B, as follows:
1. "Person" means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.
 2. "Violation" means any one of the following actions or an equivalent action by any regulatory agency, court, or other competent authority as a result of or in connection with a Covered Matter:
 - a. Final administrative order imposing monetary penalties, or otherwise requiring payments, in excess of \$100,000;
 - b. Final permit revocation or suspension;
 - c. Fine or civil judgment imposing monetary penalties, or otherwise requiring payments, in excess of \$100,000;
 - d. Judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere or no contest;
 - e. Finding of contempt of any court order enforcing the provisions of any federal or state law pertaining to a Covered Matter;
 - f. Settlement agreement or consent order imposing monetary penalties, or otherwise requiring payments, in excess of \$100,000; and
 - g. Debarment or equivalent exclusionary action by any public agency or instrumentality.
 3. "Covered Matter" means any of the following:
 - a. Any offense indicating a lack of business integrity or honesty which affects the present responsibility of a Proposer, including but not limited to:
 - (l) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

- (ii) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or
 - (iii) Unlawful price fixing between competitors, allocation of customers between competitors, Proposal rigging, or any other violation of any federal or state antitrust law that relates to the submission of Proposals or proposals.
 - b. Violation of the terms of a public agreement so serious as to affect the present responsibility of a Proposer, including but not limited to:
 - (i) a willful or material failure to perform under one or more public agreements; or
 - (ii) a willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.
 - c. Failure to pay a debt (including disallowed costs and overpayments) owed to any government agency or instrumentality, provided that the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted.
 - d. Violation of any law or regulation pertaining to the protection of public health or the environment.
4. "Parent" means any Person who owns or controls any other corporation, partnership, association, or legal entity, however organized.
5. "Subsidiary" means any corporation, partnership, association, or legal entity, however organized, owned or controlled by another Person.
6. "Affiliate": Persons are Affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third Person owns, controls, or has the power to control both.
7. "Control" means the power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a Person, whether through the ownership of stock or securities, through one or more intermediary Persons, or otherwise. For purposes of this Paragraph B.7, a Person who owns or has the power to vote, directly or indirectly, more than fifty percent (50%) of the outstanding voting securities of another Person, or more than fifty percent (50%) of value of the other Person. Such presumption may be rebutted by clear and convincing evidence. Other indicia of control shall include, but be not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or the power to appoint or actual appointment of directors or managers. For purposes of this Paragraph B.7, a person shall be treated as owning all stock and securities owned by: his siblings, spouse, and lineal descendants and ancestors; any trust of which such person or a member of such person's family is the grantor; and any corporation or other business entity in which such person or member of such person's family owns more than fifty percent (50%) of the value or voting power of such entity.
8. "Habitual Violator" means any Proposer who has incurred, or any of whose Parent, Subsidiary, or other Affiliates have incurred, in the aggregate, more than two Violations within five (5) years preceding the Proposal opening date.

9. "Enumerated Contract" shall mean any contract by which the City purchases services to be performed, which by its terms cannot be performed in less than one (1) year and which requires the payment of a stated sum of more than One Hundred Thousand Dollars (\$100,000), but shall not include contracts for the provision of professional services (such as legal, accounting, architectural or engineering) or for the construction, improvement or repair of City buildings or other public improvements.
- C. For purposes of this Section 0004, any administrative action or order, judgment or criminal conviction that has been ruled on appeal in favor of the Proposer by a final decision of a competent authority will not be considered to be a Violation. If the Proposer has an appeal pending, the outcome of which will affect the determination of whether the Proposer is a responsible Proposer, the City shall not determine the Proposer to be a responsible Proposer until a final decision on the appeal is rendered.
- D. Along with its Proposal or proposal documents, each Person Proposaling or proposing for an Enumerated Contract, or for any other contract for which the City shall choose to apply the provisions of this Section 0004 by due notice in the Proposal solicitation or request for proposals for such contract, shall provide such information as shall be necessary and appropriate for the evaluation of a Proposer under the provisions of this Section 0004, substantially in the form attached hereto as an Exhibit.
- E. If information provided by the Proposer or otherwise available to the City shows that the Proposer, or its Parent, Subsidiary, or other Affiliates, have incurred in the aggregate more than two Violations within five (5) years preceding the Proposal opening date, the City shall notify the Proposer that the Proposer appears to be a Habitual Violator within the meaning of this Section 0004. Upon receipt of the notification, the Proposer shall have ten (10) days to produce clear and convincing evidence to the City that the Proposer is not a Habitual Violator within the meaning of this Section. If the City finds that the evidence, if any, produced by the Proposer is not clear and convincing evidence that the Proposer is not a Habitual Violator, the City shall determine the Proposer to be a Habitual Violator. If the City finds that the evidence produced by the Proposer is clear and convincing evidence that the Proposer is not a Habitual Violator, the City shall determine that the Proposer is not a Habitual Violator. Notwithstanding anything to the contrary contained herein, the City may, but shall not be required to, deem a Proposer not to be a Habitual Violator, or may waive, in whole or in part, the requirements of this Section 0004, if the City, in its sole discretion, shall determine that:
1. There is no other Proposer reasonably capable of performing the subject contract;
 2. An emergency exists such that the expeditious award of the contract is essential to the public health, safety or welfare; or
 3. A change of ownership, management or control of the Proposer demonstrates, by clear and convincing evidence, as determined by a vote of five (5) at any Council meeting duly held, that the history of the Proposer is not indicative of its current business practices.
- F. Any Proposer who intentionally provides false information, or intentionally fails to provide complete information, to the City in accordance with the requirements of Subsection D hereof shall be determined to be not a responsible Proposer within the meaning of Sections 2, 9, and 10 of Article VIII of the Flagstaff City Charter.
- G. For purposes of administering the provisions of Sections 2, 9, and 10 of Article VIII of the Flagstaff City Charter, if a Proposer is not a Habitual Violator, the City may consider any other information available to the City in determining whether a Proposer is responsible. The City's

Purchasing Director or his designee may establish further specific criteria of responsibility with respect to particular solicitations or requests for proposals, which criteria shall be set forth in such solicitation or request for proposals. Further, the City's Purchasing Director or his designee may choose to apply some or all of the provisions of this Section 0004 to any contract other than an Enumerated Contract if the nature of such contract or other circumstances indicate that the Proposer's responsibility is or may be material in the performance or administration of such contract, provided that the application of such provisions shall be noted in the Proposal solicitation or request for proposals for such contract.

- H. Any determination that a Proposer is not responsible, under Section 0004 shall be made in writing and shall set forth the grounds for such determination. A copy of such determination shall be promptly sent to such Proposer.
- I. Nothing in this Section 0004 shall be construed to limit the right of the City to find any Proposer or proposer not responsible for purposes of Sections 2, 9, and 10 of Article VIII of the Flagstaff City Charter for any sufficient reason not enumerated herein, with respect to any City contract, whether or not the requirements of this Section 0004 are applicable to such contract.
- J. If, during the course of administration or performance of any contract to which the requirements of this Section 0004 are applicable (whether by the terms hereof or by action of the City's Purchasing Director, as set forth in Subsection G hereof), either:
 - 1. The City shall discover that the Proposer made a material omission or false statement in the course of providing the information required by Subsection D hereof; or
 - 2. The Proposer shall commit a Violation as defined herein, which, in conjunction with other Violations committed by the Proposer or any Affiliate, would make it a Habitual Violator hereunder;

Then the City may terminate such contract forthwith, without penalty or further obligation (other than those as may already have accrued under the terms of the contract), except as may be otherwise expressly provided in such contract.

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NON-COLLUSION AFFIDAVIT

State of _____)
County of _____) ss.
_____, affiant,
states that I am the _____

(Title)
of _____
(Contractor/Proposer)

and I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

- a. The price(s) and amount of this bid has been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
- b. Neither the price(s) nor the amount of this bid, and neither the approximate prices(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.
- c. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- d. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- e. _____, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

(Title)

Subscribed and sworn to before me

this _____ day of _____, 2011

Signature of Notary Public

OFFER

TO THE CITY OF FLAGSTAFF:

The undersigned hereby offers and agrees to furnish the material, service, or construction in compliance with the RFP Package. Signature also certifies understanding and compliance with "Certification" as defined in Article 1 of the "Standard Terms and Conditions" of this Agreement.

For clarification of this offer, contact:

Name: _____ Phone: _____ Fax: _____

Company Name: _____

Address: _____

City, State, Zip: _____

Signature of Person Authorized to Sign Offer

Title

Printed Name

Date

ATTACHMENT A

(PLEASE READ CAREFULLY, THIS IS AN EXAMPLE AGREEMENT OF WHAT THE SUCCESSFUL PROPOSER AND THE CITY WILL ENTER INTO)

SERVICE AGREEMENT FOR INVESTMENT MANAGEMENT SERVICES

**CITY OF FLAGSTAFF
and**

This Agreement for Investment Management Services ("Agreement") is made by and between the City of Flagstaff ("City"), a municipal corporation with offices at 211 W. Aspen Avenue, Flagstaff, Coconino County, Arizona, and [Party's Name], [Form of organization], with offices at [Party's address] ("Provider"), effective as of the date written below.

RECITALS

- A. The City desires to enter into this Agreement in order to obtain services of a Investment Management Services, as outlined in the Scope of Work/Specifications section of the Request for Proposals, (RFP) number 2011-42, incorporated by reference in this Agreement; and
- B. Provider has available and offers to provide the personnel necessary to provide said services within the required time in accordance with the Scope of Services included in this Agreement;

For the reasons recited above, and in consideration of the mutual covenants contained in this Agreement, the City and Provider agree as follows:

1. SERVICES TO BE PERFORMED BY PROVIDER

Provider agrees to perform the following services:

- 1.1 Provider agrees to provide the services as set forth in detail in Exhibit "A" attached hereto and hereby incorporated as part of this Agreement.
- 1.2 Provider warrants that all material, service or construction delivered under the Agreement shall conform to the specifications of the Agreement. Receipt of the material, service, or construction specified and any inspection incidental thereto by the City shall not alter or affect the obligations of Provider or the rights of the City under the foregoing warranty.
- 1.3 All services, information, computer program elements, reports and other deliverables which may be created under the Agreement are the sole property of the City and shall not be used or released by Provider or any other person except with prior written permission of the City.

2. COMPENSATION OF PROVIDER

Provider agrees to provide all of the services set forth in Exhibit "A" for prices not to exceed those set forth in the fee/price schedule, attached hereto as Exhibit "B".

3. RIGHTS AND OBLIGATIONS OF PROVIDER

3.1 Independent Contractor. The parties agree that Provider performs specialized services and that Provider enters into this Agreement with the City as an independent contractor. Nothing in this Agreement shall be construed to constitute Provider or any of Provider's agents or employees as an agent, employee or representative of the City. As an independent contractor, Provider is solely responsible for all labor and expenses in connection with this Agreement and for any and all damages arising out of Provider's performance under this Agreement.

3.2 Provider's Control of Work. All services to be provided by Provider shall be performed as determined by the City in accordance with the Scope of Services set forth in Exhibit "A." Provider shall furnish the qualified personnel, materials, equipment and other items necessary to carry out the terms of this Agreement. Provider shall be responsible for and in full control of the work of all such personnel.

3.3 Reports to the City. Although Provider is responsible for control and supervision of work performed under this Agreement, the services provided shall be acceptable to the City and shall be subject to a general right of inspection and supervision to ensure satisfactory completion. This right of inspection and supervision shall include, but not be limited to, all reports to be provided by Provider to the City and the right of the City, as set forth in the Scope of Services, and the right of the City to audit Provider's records.

3.4 Compliance with All Laws. Provider shall comply with all applicable laws, ordinances, rules, regulations and executive orders of the federal, state and local government, which may affect the performance of this Agreement. Any provision required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement shall be deemed inserted, whether or not such provisions appear in this Agreement.

4. NOTICE PROVISIONS

Notice. Any notice concerning this Agreement shall be in writing and sent by certified or registered mail as follows:

To the City's Authorized Representative
("Contract Administrator"):

Rick Compau, C.P.M., CPPO, CPPB
Director of Purchasing
City of Flagstaff
211 W. Aspen
Flagstaff, Arizona 86001

To Provider:

Provider's representative's name, title
Provider's name, e.g. name of corporation
Address Line 1
Address Line 2
City, State Zip Code

5. INDEMNIFICATION

To the fullest extent permitted by law, Provider shall indemnify, defend, save and hold harmless the City of Flagstaff and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") including claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Provider or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Provider to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Provider from and against any and all claims. It is agreed that Provider shall be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Provider shall waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by Provider for the City.

6. INSURANCE

Provider and subcontractors shall procure and maintain insurance against claims for injury to persons or damage to property, which may arise from or in connection with this Agreement by the Provider, Provider's agents, representatives, employees or contractors until all of their obligations under this Agreement have been discharged, including any warranty periods. The insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City does not represent or warrant that the minimum limits set forth in this Agreement are sufficient to protect the Provider from liabilities that might arise out of this Agreement, and Provider is free to purchase such additional insurance as Provider may determine is necessary.

6.1 Minimum Scope and Limits of Insurance. Provider shall provide coverage at least as broad and with limits not less than those stated below.

6.1.1 Commercial General Liability - Occurrence Form
(Form CG 0001, ed. 10/93 or any replacement thereof)

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$500,000
Medical Expense (any one person)	Optional

6.1.2 Automobile Liability - Any Automobile or Owned, Hired and Non-owned Vehicles
(Form CA 0001, ed. 12/93 or any replacement thereof)
Combined Single Limit Per Accident
for Bodily Injury and Property Damage

\$1,000,000

6.1.3 Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability: Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$500,000

6.1.4 Professional Liability \$10,000,000

6.2 Self-insured Retention/Deductibles. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate such self-insured retentions with respect to the City, its officers, agents, employees, and volunteers.

6.3 Other Insurance Requirements. The policies shall contain, or be endorsed to contain, the following provisions:

6.3.1 Commercial General Liability and Automobile Liability Coverages. The City of Flagstaff, its officers, officials, agents and employees shall be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Agreement and activities performed by or on behalf of the Provider, including products and completed operations of the Provider; and automobiles owned, leased, hired or borrowed by the Provider.

6.3.2 The Provider's insurance shall contain broad form contractual liability coverage.

6.3.3 The City of Flagstaff, its officers, officials, agents and employees volunteers shall be named as additional insureds to the full limits of liability purchased by the Provider even if those limits of liability are in excess of those required by this Agreement.

6.3.4 The Provider's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents and employees, shall be in excess of the coverage of the Provider's insurance and shall not contribute to it.

6.3.5 The Provider's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.3.6 Coverage provided by the Provider shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

6.3.7 The policies shall contain a waiver of subrogation against the City, its officers, officials, agents and employees for losses arising from work performed by Provider for the City.

6.4 Notice of Cancellation. Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. When cancellation is for non-payment of premium, then at least ten (10) days' prior notice shall be given to the City. Notices required by this section shall be sent directly to: **Buyer name and Title**, City of Flagstaff, 211 W. Aspen Avenue, Flagstaff, Arizona 86001.

6.5 Acceptability of Insurers. Provider shall place insurance hereunder with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a “Best’s” rating of not less than A-: VII. The City does not represent or warrant that the above required minimum insurer rating is sufficient to provide the Provider from potential insurer insolvency.

6.6 Verification of Coverage. The Provider shall furnish the City with certificates of insurance (ACORD form) as required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

6.6.1 The City must receive and approve all certificates of insurance before the Provider commences work. Each insurance policy required by this Agreement shall be in effect at, or before, commencement of work under this Agreement and shall remain in effect until all Provider’s and its subcontractors’ obligations under this Agreement have been met. The Provider’s failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of this Agreement.

6.6.2 All certificates of insurance shall be sent directly to: **Buyer name and Title**, 211 West Aspen Avenue, Flagstaff, Arizona 86001. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require, and receive within ten (10) days, complete, certified copies of all insurance policies and endorsements required by this Agreement at any time. The City shall not be obligated, however, to review any insurance policies or to advise Provider of any deficiencies in such policies and endorsements. The City’s receipt of Provider’s policies or endorsements shall not relieve Provider from, or be deemed a waiver of, the City’s right to insist on strict fulfillment of Provider’s obligations under this Agreement.

6.7 Subcontractors. Provider’s certificate(s) shall include all subcontractors as additional insureds under its policies, or Provider shall furnish to the City Separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

6.8 Approval. Any modification or variation from the insurance requirements in this Agreement must have the prior approval of the City’s Attorney’s Office, whose decision shall be final. Such action will not require a formal Agreement amendment but may be made by administrative action.

7. DEFAULT AND TERMINATION

7.1 Events of Default Defined. The following shall be Events of Default under this Agreement:

7.1.1 Any material misrepresentation made by Provider to the City;

7.1.2 Any failure by Provider to perform its obligations under this Agreement including, but not limited to, the following:

7.1.2.1 Failure to commence work at the time(s) specified in this Agreement due to a reason or circumstance within Provider’s reasonable control;

7.1.2.2 Failure to perform the work with sufficient personnel and equipment or with sufficient equipment to ensure completion of the work within the specified time due to a reason or circumstance within Provider’s reasonable control;

7.1.2.3 Failure to perform the work in a manner reasonably satisfactory to the City;

7.1.2.4 Failure to promptly correct or re-perform within a reasonable time work that was rejected by the City as unsatisfactory or erroneous;

7.1.2.5 Discontinuance of the work for reasons not beyond Provider's reasonable control;

7.1.2.6 Unsatisfactory performance as judged by the Contract Administrator;

7.1.2.7 Failure to provide the City, upon request, with adequate assurance of future performance;

7.1.2.8 Failure to comply with a material term of this Agreement, including, but not limited to, the provision of insurance; and

7.1.2.9 Any other acts specifically stated in this Agreement as constituting a default or a breach of this Agreement.

7.2 Remedies.

7.2.1 Upon the occurrence of any Event of Default, the City may declare Provider in default under this Agreement. The City shall provide written notification of the Event of Default. If such Event of Default is not cured within seven (7) days of receipt of the notification, the City may invoke any or all of the following remedies:

7.2.1.1 The right to cancel this Agreement as to any or all of the services yet to be performed;

7.2.1.2 The right of specific performance, an injunction or any other appropriate equitable remedy;

7.2.1.3 The right to monetary damages;

7.2.1.4 The right to withhold all or any part of Provider's compensation under this Agreement;

7.2.1.5 The right to deem Provider non-responsive in future contracts to be awarded by the City; and

7.2.1.6 The right to seek recoupment of public funds spent for impermissible purposes.

7.2.2 The City may elect not to declare an Event of Default or default under this Agreement or to terminate this Agreement upon the occurrence of an Event of Default. The parties acknowledge that this provision is solely for the benefit of the City, and that if the City allows Provider to continue to provide the Services despite the occurrence of one or more Events of Default, Provider shall in no way be relieved of any of its responsibilities or obligations under this Agreement, nor shall the City be deemed to waive or relinquish any of its rights under this Agreement.

7.2.3 In the Event of Default by the Provider, the City shall not be liable to Provider for any amount, and Provider may be liable to the City for any and all damages sustained by reason of the default which gave rise to the termination.

7.3 Right to Offset. Any costs, including but not limited to attorney's fees, costs of remediation, and costs of delay, incurred by the City due to default of Proposer, or due to the City's exercise any of the remedies available to it under this Agreement, may be offset by use of any payment due for services completed before the default or the exercise of any remedies. If the offset amount is insufficient to cover excess costs, Provider shall be liable for and shall remit promptly to the City the balance upon written demand from the City.

7.4 Termination for Convenience. The City reserves the right to terminate, with or without cause, any resulting order or contract upon thirty (30) days written notice. The City shall be responsible only for those standard items or services which have been delivered and accepted. If any items being purchased are truly unique and therefore not salable or useable for any other application, the City shall reimburse Proposer for actual labor, material, and burden costs, plus a profit not to exceed 8%. Title to all materials, work-in-progress, and completed but undelivered goods, shall pass to the City after costs are claimed and allowed. Proposer shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

8. GENERAL PROVISIONS

8.1 Headings. The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.2 Jurisdiction and Venue. This Agreement shall be administered and interpreted under the laws of the State of Arizona. Provider hereby submits itself to the original jurisdiction of those courts located within Coconino County, Arizona.

8.3 Attorney's Fees. Subject to Section 8.11, if suit or action is initiated in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court, including an appellate court, may adjudge reasonable as attorney fees.

8.4 Severability. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, the remainder of this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

8.5 Successors and Assigns. No right or interest in the Agreement shall be assigned by Provider without prior written permission of the City, and no delegation of any duty of Provider shall be made without prior written permission of the City. The City shall not unreasonably withhold approval and shall notify Provider of the City's position within fifteen (15) days of receipt of written notice by Provider. This Agreement shall extend to and be binding upon the Provider, its successors and assigns, including any individual, company, partnership, or other entity with or into which the Provider shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the Provider shall sell its assets.

8.6 Subcontracts. No subcontract shall be entered into by Provider with any other party to furnish any service specified herein without the advance written approval of the City. All subcontracts shall comply with Federal, State and local laws and regulations that are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth in the Agreement which shall apply with equal force to the subcontract, as if the Subcontractor were the Provider referred to herein. Provider is responsible for contract performance whether or not Subcontractors are used. The City shall not unreasonably withhold approval and shall notify Provider of the City's position

within fifteen (15) days of receipt of written notice by Provider. Provider shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

8.7 Conflict of Interest. Provider covenants that Provider presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Provider further covenants that in the performance of this Agreement, Provider shall not engage any employee or apprentice having any such interest. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

8.8 Authority to Contract. Each party represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder, and that it has taken all actions necessary to authorize entering into this Agreement.

8.9 Integration. This Agreement represents the entire understanding of City and Provider as to those matters contained in this Agreement, and no prior oral or written understanding shall be of any force or effect with respect to those matters, except for documents comprising the RFP Package that have been incorporated into this Agreement. This Agreement may not be modified or altered except in writing signed by duly authorized representatives of the parties.

8.10 Nonappropriation. If the City Council does not appropriate funds to continue this Agreement and pay for charges hereunder, the City may terminate this Agreement at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Provider at least thirty (30) days prior to any termination for a lack of funds and will pay to the Provider all approved charges incurred prior to Provider's receipt of such notice, subject to the availability of funds therefor.

8.11 Mediation. If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall take place in Flagstaff, Arizona, shall be self-administered, and shall be conducted under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org with the exception of the mediator selection provisions, unless other procedures are agreed upon by the parties. Unless the parties agree otherwise, the mediator(s) shall be selected from panels of mediators trained under the Alternative Dispute Resolution Program of the Coconino County Superior Court. Each party agrees to bear its own costs in mediation. The parties shall not be obligated to mediate if an indispensable party is unwilling to join the mediation. This mediation provision shall not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if a party seeks provisional relief under the Arizona Rules of Civil Procedure.

8.12 Non-Discrimination. Provider shall not discriminate against any employee, or applicant for employment in violation of Federal Executive Order 11246, State Executive Order 75-5 as modified by State Executive Order 99-4 or A.R.S. 41-1461 et. seq. The Provider shall be required to comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

8.13 Compliance with Federal Immigration Laws and Regulations. Provider hereby warrants to the City that the Provider and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-214(A) (hereinafter "Provider Immigration Warranty").

8.13.1 A breach of the Provider Immigration Warranty shall constitute a material breach of this Agreement and shall subject the Provider to penalties up to and including termination of this Agreement at the sole discretion of the City.

8.13.2 The City retains the legal right to inspect the papers of any Provider or Subcontractor employee who works on this Agreement to ensure that the Provider or Subcontractor is complying with the Provider Immigration Warranty. Provider agrees to assist the City in regard to any such inspections.

8.13.3 The City may, at its sole discretion, conduct random verification of the employment records of the Provider and any of Subcontractors to ensure compliance with Provider's Immigration Warranty. Provider agrees to assist the City in regard to any random verifications performed.

8.13.4 The provisions of this Article must be included in any contract the Provider enters into with any and all of its Subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

8.14 Anti-Trust Violations. The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Provider. Therefore, to the extent permitted by law, Provider hereby assigns to the City any and all claims for such overcharges as to the goods or services used to fulfill this Agreement.

8.15 Advertising. Proposer shall not advertise or publish information concerning the Agreement, without the prior written consent of the City.

8.16 Inspection. All material, services or construction are subject to final inspection and acceptance by the City. The City may, at reasonable times and at its expense, inspect the plant or place of business of a Proposer or Subproposer which is related to the performance of any contract. This right of inspection and supervision shall include, but not be limited to the right of the City to audit Provider's records.

8.17 Force Majeure. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure.

8.17.1 The term "force majeure" means an occurrence that is unforeseeable and beyond the control of the party affected, which occurs without its fault or negligence, and which it is unable to prevent by exercising reasonable diligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, lockouts, injunctions-intervention-acts, or failures or refusal to act by government authority, and other similar occurrences. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party, in writing, of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement.

8.17.2 Force majeure shall not include the following occurrences:

- a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or by an oversold condition of the market.

b. Late performance by a Subcontractor unless the delay arises directly out of a force majeure occurrence in accordance with this force majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by force majeure.

8.17.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing as soon as is practical, of the commencement of such delay and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified-return receipt and shall make a specific reference to this section, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.

8.18 Business Operations in Sudan/Iran. In accordance with A.R.S. § 35-397, the Provider certifies that the Provider and its affiliates and subsidiaries do not have scrutinized business operations in Sudan or Iran. If the City determines that the Provider's certification is false, the City may impose all legal and equitable remedies available to it, including but not limited to termination of this Agreement.

9. DURATION

This Agreement shall become effective on and from the day and year executed by the parties, indicated below, and shall continue in force until **END DATE OF INITIAL TERM** unless sooner terminated as provided above. The City reserves the right to unilaterally extend the period of the Agreement for ninety (90) days beyond the stated termination date. In addition, by mutual written amendment, the Agreement may be renewed for supplemental periods of up to **NUMBER OF ADDITIONAL TERMS** additional one (1) year terms.

City of Flagstaff

Provider

City Manager

PROVIDER'S NAME AND TITLE

Attest:

City Clerk

Approved as to form:

City Attorney

Date of Execution: _____

CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001

REQUEST FOR PROPOSAL #2011-42
BUYER: Ann Marie Fisher, CPPB
PH: (928) 779-7619 , FX: (928) 779-7656

EXHIBIT A

SCOPE OF WORK

INSERT SCOPE OF WORK

CITY OF FLAGSTAFF PURCHASING DIVISION
211 WEST ASPEN AVE.
FLAGSTAFF, ARIZONA 86001

REQUEST FOR PROPOSAL #2011-42
BUYER: Ann Marie Fisher, CPPB
PH: (928) 779-7619 , FX: (928) 779-7656

EXHIBIT B

FEE SCHEDULE

INSERT FEE/PRICE SCHEDULE